

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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MASTEC NORTH AMERICA, INC.

Employer,

and

MIGUEL R. VARGAS, AN INDIVIDUAL

Case No. 01-RD-130917

Petitioner,

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 488, AFL-CIO,

July 2, 2014

Union

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**UNION'S STATEMENT IN OPPOSITION
TO EMPLOYER'S REQUEST FOR REVIEW**

The International Brotherhood of Electrical Workers Local 488 ("the Union"), is the certified collective bargaining representative for a unit of field technicians and warehouse employees employed by Mastec North America ("the Employer") in the state of Connecticut. The charge in Case No. 34-CA-090246 was filed by the Union on November 21, 2012, alleging that the Employer maintains several rules and policies that infringe on the statutory rights of employees. Complaint issued on this charge, alleging that the Employer has maintained three unlawful rules in a handbook distributed to all employees of the Employer. The parties have agreed to expedite the litigation of these allegations by submitting the case directly to the Board on a stipulated

record.

Meanwhile, on June 17, 2014, the petition in Case No. 01-RD-130917 was filed, seeking to decertify the Union as bargaining agent for the Connecticut bargaining unit. The Regional Director issued a letter blocking processing of that petition based upon the charge in Case No. 34-CA-090246. The Employer that issued the unlawful rules, now claiming to be anxious to vindicate the rights of its employees, filed a Request for Review of the Regional Director's decision to block the petition. This memorandum is submitted in opposition to the Request for Review.

The Regional Director Properly Exercised his Authority in Blocking this Petition

Under Section 11733.1 of the Casehandling Manual, if a regional director finds merit to an unfair labor practice charge, he is to block the processing of any pending petition where the unfair labor practices "would have a tendency to interfere with employee free choice in an election...." The Board's "general policy" is to hold a petition in abeyance during pendency of unfair labor practice charges. CHM sec. 11730.4. A regional director who blocks the processing of a petition exercises authority delegated pursuant to Section 3(b) of the Act.

Under section 102.71(b) of the Rules and Regulations, the Board will grant review of a regional director's decision to block a petition only under limited circumstances. In this case, the Employer claims the Regional Director "departed from officially reported Board precedent." However, the Employer does not cite to a single case involving similar unfair labor practices in which the Board declined to block a

pending petition. There is no precedent that conflicts with the Regional Director's decision.

The Employer cites the standards set out in the Casehandling Manual for deciding whether to block the processing of a petition. These are:

- (a) The character, scope and timing of the conduct alleged in the charge, and the conduct's tendency to impair the employees' free choice.
- (b) The size of the work force relative to the number of employees involved in the events or affected by the conduct alleged in the charge;
- (c) Whether the employees were bystanders to or the actual targets of the conduct alleged in the charge;
- (d) The entitlement and interest of the employees in an expeditious expression of their preference regarding representation;
- (e) The relationship of the charging parties to labor organizations involved in the representation case;
- (f) The showing of interest, if any, presented in the representation case by the charging party; and
- (g) The timing of the charge.

(CHM sec. 11731.2, quoted by the Employer in its Request for Review at p. 6).

However, the Employer does not analyze these criteria or attempt to apply them to the allegations of the Complaint in Case No. 34-CA-090246. Application of these criteria to the allegations of the Complaint confirms that the Regional Director properly blocked the petition. The conduct that is the subject of the unfair labor practices is broad in scope, as the rules at issue apply to all of its employees throughout the country. The unfair labor practices affected every employee in the bargaining unit, since the rules

apply to and were disseminated to the entire unit. The unit employees are the targets of the rules, which are directed to them; they are not bystanders. The Charging Party Union is the incumbent union and a party to the decertification petition. Finally, the charge was filed long before the petition. Thus, the charge could not have been filed as a ploy to avoid an election on a petition that was not even contemplated when the charge was filed. Thus, the majority of the relevant factors support the Regional Director's decision.

The Employer's actual argument seems to be that its unfair labor practices are not really serious. As the Employer points out, the outcome of the unfair labor practice case turns on "the facial validity" of its handbook policies (Request for Review at 6).

The Employer implies that these are somehow mere "technical" violations of the law.

The Employer cites no cases to support the proposition that the dissemination and maintenance of illegal rules is somehow not a serious unfair labor practice.

Contemporary employee handbooks are written by attorneys with the objective of preserving and enhancing an employer's power over its employees and minimizing the opportunities for the employees to take action to defend their interests. This philosophy runs counter to the purpose of the Act to remedy "inequality of bargaining power between employees ... and employers who are organized in the corporate or other forms of ownership association...." Sec. 1 of the NLRA. Rules that restrict the rights of employees to seek to enhance their power in dealing with the employer thus strike at the basic purpose of the Act. Rules that are disseminated to all employees affect the

rights of all employees. Thus, this case involves serious unfair labor practices that affect the rights of all employees. There is no reason to disregard the Board's blocking policies in a case involving rules that are unlawful on their face.

The Employer also argues that there are "compelling reasons" for reconsideration of the Board's blocking policies. In its Request for Review, the Employer fails to identify those compelling reasons. As the Regional Director applied the applicable standards and did not depart from controlling precedent, the Employer's Request for Review should be denied.

RESPECTFULLY SUBMITTED

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 488, AFL-CIO

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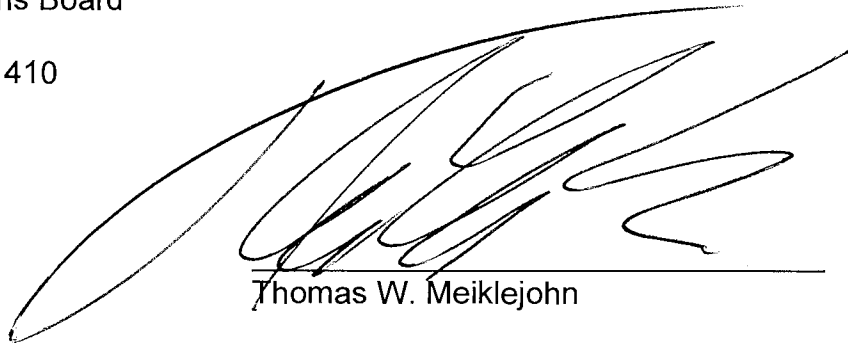
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Union's Statement in Opposition To Employer's Request for Review was served upon the following for filing this 2nd day of July, 2014, via U.S. mail, postage prepaid, and via email, to:

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A large, stylized handwritten signature in black ink, appearing to read 'T. Meiklejohn', is written over a horizontal line.

Thomas W. Meiklejohn